Billing Code 4310–55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2015–N170; FXES1113088ENDT0–156–FF08ENVD00]

Endangered and Threatened Wildlife and Plants; Proposed Low-Effect Habitat Conservation Plan for the Desert Tortoise, Nye County, Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Receipt of application; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce receipt from Valley Electric Association, Inc. of an application for a 30-year incidental take permit (permit) under the Endangered Species Act of 1973, as amended (Act). The requested permit would authorize take of the Mojave desert tortoise resulting from the construction, operation, and maintenance of a solar photovoltaic facility in the town of Pahrump, Nevada. The permit application includes a proposed low-effect habitat conservation plan (HCP) that incorporates measures the applicant would implement to minimize and mitigate effects of project activities on the desert tortoise. In accordance with the

requirements of the National Environmental Policy Act (NEPA), we have prepared a draft low-effect screening form supporting our preliminary determination that the proposed action qualifies as a categorical exclusion under NEPA. We are accepting comments on the permit application, proposed low-effect HCP, and draft NEPA compliance documentation.

DATES: Written comments on the permit application, proposed low-effect HCP, and draft NEPA compliance documentation must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: *Obtaining Documents:* Persons wishing to review the application, the proposed low-effect HCP, the draft NEPA compliance documentation, or other related documents may obtain copies by written or telephone request to Jeri Krueger, by mail at U.S. Fish and Wildlife Service, Reno Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502, or by phone at 775–861–6300. Copies of these documents may also be obtained on the internet at http://www.fws.gov/nevada. *Submitting Comments:* Please address written comments to Michael J. Senn, Field Supervisor, U.S. Fish and Wildlife Service, Southern Nevada Fish and Wildlife Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89130. You may also send comments by facsimile to 702–515–5231. Please note that your information request or comment is in reference to the Valley Electric Association Community Solar Project Low-Effect HCP, Nye County, Nevada.

FOR FURTHER INFORMATION CONTACT: Jeri Krueger, Reno Fish and Wildlife Office, at the address or telephone number listed above under **ADDRESSES**.

SUPPLEMENTARY INFORMATION:

Document Availability

You may obtain copies of the permit application, proposed HCP, draft NEPA compliance documentation, and other related documents from the individual listed under **FOR FURTHER INFORMATION CONTACT**. Copies of these documents are also available for public inspection, by appointment, during regular business hours (8 a.m. to 4:30 p.m.), at the Southern Nevada Fish and Wildlife Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89130.

Background Information

Section 9 of the Act (16 U.S.C. 1531-1544 *et seq.*) and Federal regulations (50 CFR 17) prohibit the taking of fish and wildlife species listed as endangered or threatened under section 4 of the Act. Take of federally listed fish or wildlife is defined under the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or attempt to engage in such conduct. The term "harass" is defined in the regulations as to carry out actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). The term "harm" is defined in the regulations as significant habitat modification or degradation that results in death or injury of listed species by significantly impairing essential behavioral patterns,

including breeding, feeding, or sheltering (50 CFR 17.3). However, under specified circumstances, the Service may issue permits that allow the take of federally listed species, provided that the take that occurs is incidental to, but not the purpose of, an otherwise lawful activity.

Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively. Section 10(a)(1)(B) of the Act contains provisions for issuing such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

(1) The taking will be incidental;

(2) The applicants will, to the maximum extent practicable, minimize and mitigate the impact of such taking;

(3) The applicants will develop a proposed HCP and ensure that adequate funding for the HCP will be provided;

(4) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(5) The applicants will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

Proposed Project

Valley Electric Association, Inc. (VEA) proposes to construct, operate, and maintain a photovoltaic solar facility with 54,864 fixed panels within an 80-acre parcel of land located in the northeast part of the town of Pahrump that will provide power to VEA's members within their service area located mainly along the Nevada-California

border. The project would provide a source of clean energy to be used by VEA members and would create additional job opportunities in the community. The project proponent is applying for an incidental take permit because the project is located within desert tortoise habitat and take would be unavoidable as a result of constructing and operating the solar facility on the project site.

The leading edge of the solar panels would be raised to a height of 42 inches above the ground, which is about 18 inches above current industry standards. All panels would be blue-black in color and would be composed of the least reflective glass available. Two solar panel spacing configurations would be used: the northern 40 acres would have an inner row spacing of 14 feet, and the southern 40 acres would have an inner row spacing of 20 feet. These design feature modifications are for the purpose of allowing more light to reach beneath the solar array to maintain vegetation underneath the solar panels and encourage continued use of the project site by desert tortoises, and to determine if wider spacing between the panels would reduce the potential for bird strikes on the panels. The project site would be fenced with security chain-link fencing, incorporating 10 by 7-inch gaps along the bottom of the fence to allow desert tortoises to gain access and occupy the site during operation of the solar facility.

The project proponent would develop and implement an Avian Protection and Monitoring (APM) Plan to minimize and monitor potential impacts to migratory birds from the solar facility. The solar array is designed to determine if different configurations of solar panels may break up the appearance of a lake-like effect from a bird's perspective. The project proponent would use a qualified third-party contractor to

design a monitoring protocol to track any differences in effects to migratory birds and incorporate the protocol into the APM Plan.

The project is located within the town limits of Pahrump in T 19 S, R 53 E, Section 25. In addition, an associated distribution line and access road would be constructed within a 2,640-foot by 20-foot easement in T 19 S, R 53 E, Sections 24 and 25. The project area is approximately 1.4 miles east of Highway 160 and immediately south of Simkins Road.

Proposed Covered Activities

The duration of construction activities is expected to last approximately 8 months and the project is anticipated to be in service for 30 years, which is the requested duration of the permit term. Construction of the solar field would include the following:

- Installation of 30 degree fixed tilt, ground mounted solar PV panels capable of producing 15 MWAC of power. The panels would be installed in twelve groupings each containing 4,572 315-watt panels (54,864 panels in total). Each panel would measure 39 inches by 79 inches, with the leading edge about 42 inches above the ground. The panels would be blue-black in color and would be composed of the least reflective glass available.
- Construction of a 40-foot wide by 2,642-foot long gravel access road down the east-west center of the site.
- Installation of 10 inverter stations (12 feet by 40 feet by 7.1 feet tall) adjacent to the access road.

- Construction of a 0.4-acre switchyard area in the northeast corner of the site, which would include a parking area, a 500 square foot prefabricated building for housing system monitoring equipment and for use as a visitor center, and a switchgear cabinet containing system project equipment, metering, telecommunications equipment, and switches to be mounted on a concrete pad.
- Conduit and wire that would be buried approximately 4 feet deep between the panels and inverter station and switchgear.
- Grading and leveling a 0.5-acre area in the northwest corner of the site to be used as a future well site.
- Placement of rip-rap and culverts in the large wash located in the southern portion of the site.
- Containment of staging and temporary work areas within the 80-acre site.
- Installation of a 6-foot tall chain-link perimeter fence around the 80-acre site along with secured access gates. The fence would have barbed wire on top for security purposes. The fence would also include openings along the bottom that are at least 10 inches high and 7 inches wide and spaced approximately 260 feet apart to allow desert tortoise ingress and egress at the site after construction activities are completed.
- Construction of a 2,640-foot 24.9kV distribution line and 10-foot wide access road that would connect to an existing power line located east of the project site.

The project would use between 500,000 and 600,000 gallons of water during construction. The water would be obtained off-site from an existing local area water utility and trucked to the project site. After construction, it is not anticipated that the

panels would need to be washed. However, should washing become necessary, water would be trucked in to the project site. Any water used for washing would be contained within the project site (i.e., no run-off). Also, the prefabricated building would ultimately have water supplied by a small well and a sewer system. VEA owns one-half acre-foot per year of water rights to use for the building. All water from the future well would be used for the prefabricated building only and not within the solar array or other facilities.

VEA would manage and control noxious weeds and invasive plant species consistent with applicable regulations. The introduction of noxious weeds and invasive plants would be addressed through the use of certified weed-free seed and mulching; cleaning of vehicles to avoid introducing invasive weeds; and education of personnel on weed identification, the manner in which weeds spread, and methods for treating infestations. Regarding the cleaning of vehicles, a controlled inspection and cleaning area would be established to visually inspect construction equipment arriving at the project site and to remove and collect seeds that may be adhering to tires and other equipment surfaces. Equipment would also be cleaned any time thereafter if the equipment leaves the project site, is used on another project, and reenters the project site. Further, to prevent the spread of invasive species, project developers would determine whether a pre-activity invasive species survey is warranted and if so, to conduct the survey. Were noxious weeds or invasive plants to be introduced to the project site as a result of the project, VEA would use principles of integrated pest management to prevent the spread of invasive species.

Rather than using the typical construction technique of grading, tilling, and leveling the entire 80-acre project site, the applicant would leave most of the vegetation

intact, and would crush, mow, or trim vegetation to avoid interfering with the solar panels. Solar panels would be elevated to a height of 42 inches at the bottom leading edge to promote vegetation to persist underneath the solar array by allowing more light to reach the vegetation left below the solar panels.

Two solar panel spacing configurations would be designed within the 80-acre project site:

(1) Industry Standard: The northern 40 acres of the project site would have an inner row spacing (i.e., distance between the upper trailing edge of a panel and the bottom leading edge of the panel behind it) of 14 feet.

(2) Modified Configuration: The southern 40 acres of the project site would have an inner row spacing of 20 feet in order to allow for more light to reach the ground and encourage vegetation growth and break up the pattern of the solar panels in an effort to reduce the potential for impacts to migratory birds.

The project includes operation and maintenance of the solar field, which would be accessed primarily along the center access road mostly using lightweight off-highway vehicles. Operation and maintenance activities include but are not limited to: visual inspections, cleaning of the front screens and rear louvers, cleaning of the air intake filter, verification of electrical connections, and verification of signal connections. Within the PV array, activities would include visual inspections of the PV modules, racking system, electrical wiring, weather stations, and the perimeter fence. Cleaning or washing of PV modules is not expected, but if needed, would be performed with warm water and an environmentally friendly soap that would not harm wildlife or vegetation. Equipment would be replaced as necessary and would be performed on foot whenever possible.

Upon retirement of the facility, all equipment would be removed, including fencing, and disturbance reclaimed (holes filled in and raked to match the surrounding topography). The area would then be allowed to recover naturally.

The project would result in the long-term loss of approximately 4 acres of desert tortoise habitat (2.4 acres from construction of the on-site gravel access road, 0.4 acre associated with the switchyard, 0.5 acre associated with the well site, and 0.65 acre from construction of the distribution line access road). Vegetation within the remaining acreage on the 80-acre project site would be left intact, subject to crushing, mowing, and trimming as necessary, and the facility would remain available for desert tortoises to access and occupy the site.

Proposed Conservation Measures

The applicant would install a temporary desert tortoise exclusion fence and access gates along the perimeter of the 80-acre project site prior to commencement of construction activities and perform desert tortoise clearance surveys to temporarily move resident tortoises out of harm's way during construction of the facility. Based on results from desert tortoise presence / absence surveys conducted on the project site in April of 2015, an estimate of 2 to 4 adult tortoises may occupy the project site. Tortoises found during clearance surveys would be moved to a tortoise-fenced enclosure on property owned by the applicant that is located 2,000 feet east of the project site. The applicant would follow all protocols and approved methodologies for handling and care of desert tortoises. Upon completion of construction activities, tortoises would be individually

marked, fitted with tracking devices, returned to the project site and released, and the temporary tortoise exclusion fence would be removed.

The permanent security fence around the perimeter of the solar project area would have tortoise access points constructed to allow tortoises to access and occupy the project site after construction is completed.

Vegetation would not be bladed and would be left intact, but mowed, clipped, or crushed within the solar project site to maintain root structure of vegetation and to keep the existing seed bed.

PV panels would be mounted on driven piers to minimize site disturbance by avoiding the need for excavation and concrete placement.

PV panels would be elevated to a minimum height of 42 inches, which is about 18 inches above the current industry standard, and spacing increased in a portion of the array to accommodate tortoise movement and vegetation growth beneath arrays.

Combiner boxes would be relocated to the center roadway to minimize trenching.

Overall, ground disturbance would be kept to the minimum required.

Desert tortoise exclusion fencing would be constructed along the perimeter of the switchyard and the well site for the lifetime of the project to prevent tortoises from accessing these two high activity areas.

The on-site gravel access road would be posted with a 15-MPH speed limit once the facility is put into service, and utility terrain vehicles would mostly be used along the route in order to have maximized ground view to watch for tortoises. When use of larger vehicles is required, ground guides would be utilized to walk in front of vehicles to ensure the road is free of tortoises.

Desert tortoise surveys would be conducted one week prior to the start of construction of the distribution line and associated access road. Tortoise burrows would be flagged and construction modified to avoid impacts. An authorized desert tortoise biologist would be present during construction. If a tortoise is found within the construction area, activities would cease until the desert tortoise moves out of harm's way or is moved out of harm's way by an authorized desert tortoise biologist. Relocation would be the minimum distance possible (with a maximum of 500 meters) within appropriate habitat to ensure its safety from death, injury, or collection associated with the Project or other activities. Other measures would be implemented to minimize impacts to desert tortoise as listed in Appendix D in the HCP and in accordance with the most current Service-approved protocols (currently the Service's 2009 Desert Tortoise Field Manual).

All employees and contractors involved with the project would be required to complete a sensitive resources education program approved by the Service. The program would cover the distribution, general behavior, and ecology of listed species; sensitivity to human activities; legal protections; penalties for violation of state and Federal laws; reporting requirements; and minimization measures.

The project proponent would use qualified third-party contractors to design and implement research and monitoring studies to evaluate the impact of the two solar panel configurations on vegetation and migratory birds. Specific to desert tortoise, the studies would be designed to address questions related to effects of solar panels on vegetation growth, ability to seed underneath solar panels with desert tortoise forage species, and

effects of solar panels on soil conditions such as temperature, water balance, microbial community, and biotic crust.

Proposed Action and Alternatives

The Proposed Action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to avoid, minimize, and mitigate impacts to the Mojave desert tortoise. If we approve the permit, take of the Mojave desert tortoise would be authorized for the applicant's activities associated with the Valley Electric Association's Community Solar Project. An estimated 2 to 4 adult desert tortoises may occupy the project site, and would be temporarily moved to a site close to the project area during construction activities and returned to the project site after construction is completed to ensure resident tortoises are not harmed. In the proposed HCP, the applicant considers alternatives to the taking of the Mojave desert tortoise under the proposed action. The Traditional Solar Project Alternative would involve blading and grading the 80-acre project site prior to installation of the PV array. The project site would be fenced with tortoise-proof fencing and cleared of all tortoises, resulting in long-term displacement of resident tortoises and long-term loss of all habitat in the project site. The applicant also considers a no-action alternative under which the project would not be constructed and incidental take of the Mojave desert tortoise would not be authorized. However, the no-action alternative would not meet the needs of the applicant to provide clean energy to residents within their service area.

Our Preliminary Determination

The Service has made a preliminary determination that approval of the proposed HCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2 Appendix 1, 516 DM 6 Appendix 1, and 516 DM 8.5(c)(2)) and as a "low-effect" plan as defined by the Habitat Conservation Planning Handbook (November 1996).

We base our determination that a HCP qualifies as a low-effect plan on the following three criteria:

(1) Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats, including designated critical habitat;

(2) Implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and

(3) Impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

Next Steps

We will evaluate the permit application, associated documents, and comments we receive to determine whether the permit application meets the requirements of section

10(a) of the Act, NEPA, and implementing regulations. If we determine that all requirements are met, we will issue a permit to the applicant for the incidental take of the Mojave desert tortoise from the implementation of the covered activities described in the Habitat Conservation Plan for Valley Electric Association's Community Solar Project, Pahrump, Nye County, Nevada. We will not make our final decision until after the end of the 30-day public comment period, and we will fully consider all comments we receive during the public comment period.

Public Availability of Comments

All comments we receive become part of the public record. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, NEPA, and Service and Department of Interior policies and procedures. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32), and the NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500-1508).

Dated: August 31, 2015**.**

Michael J. Senn,
Field Supervisor,
Southern Nevada Fish and Wildlife Office,
Las Vegas, Nevada.
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